

DEFENSE

Procurement

**Memorandum of Understanding
Between the
UNITED STATES OF AMERICA
and FINLAND**

Signed at Helsinki and Washington
June 13 and August 5, 2008



NOTE BY THE DEPARTMENT OF STATE

Pursuant to Public Law 89—497, approved July 8, 1966
(80 Stat. 271; 1 U.S.C. 113)—

“ . . .the Treaties and Other International Acts Series issued under the authority of the Secretary of State shall be competent evidence . . . of the treaties, international agreements other than treaties, and proclamations by the President of such treaties and international agreements other than treaties, as the case may be, therein contained, in all the courts of law and equity and of maritime jurisdiction, and in all the tribunals and public offices of the United States, and of the several States, without any further proof or authentication thereof.”

FINLAND

Defense: Procurement

*Memorandum of understanding signed at
Helsinki and Washington
June 13 and August 5, 2008;
Entered into force October 3, 2009.*

MEMORANDUM OF UNDERSTANDING
BETWEEN
THE GOVERNMENT OF THE UNITED STATES OF AMERICA
AND
THE GOVERNMENT OF THE REPUBLIC OF FINLAND
CONCERNING
RECIPROCAL DEFENSE PROCUREMENT
(SHORT TITLE: U.S.-FINLAND RECIPROCAL DEFENSE PROCUREMENT MOU)

PREAMBLE

The Government of the United States of America and the Government of the Republic of Finland, hereinafter referred to as "the Parties",

BEARING in mind that Finland is a militarily non-allied country and the membership of the United States in the North Atlantic Treaty Organization;

DESIRING to promote the objectives of rationalization, standardization, interoperability, and mutual logistics support throughout their defense relationship;

RECOGNIZING their longstanding relationship as represented by the Memorandum of Understanding concerning Reciprocal Principles in Defense Procurement signed in Washington on October 24, 1991;

DESIRING to develop and strengthen the friendly relations existing between them;

SEEKING to achieve and maintain fair and equitable opportunities for the industry of each country to participate in the defense procurement programs of the other;

DESIRING to enhance and strengthen each country's industrial base;

DESIRING to promote the exchange of defense technology consistent with their respective national policies;

DESIRING to make the most cost-effective and rational use of the resources allocated to defense; and

DESIRING to remove discriminatory barriers to procurements of supplies or services produced by industrial enterprises of the other country to the extent mutually beneficial and consistent with national laws, regulations, policies, and international obligations;

HAVE agreed as follows:

**ARTICLE I
Applicability**

A. This Memorandum of Understanding (MOU) covers the acquisition of defense capability by the Department of Defense of the United States of America and the Ministry of Defense of Finland through:

- 1. Research and development;**
- 2. Procurements of supplies, including defense articles; and**
- 3. Procurements of services, including defense services.**

B. This MOU does not cover:

- 1. Construction; or**
- 2. Construction material supplied under construction contracts.**

**ARTICLE II
Principles Governing Mutual Defense Cooperation**

A. Each Party recognizes and expects that the other uses sound processes for requirements definition, acquisition, and procurement and contracting, and that these processes both facilitate and depend on transparency and integrity in the conduct of procurements. Each Party shall ensure that its processes are consistent with the implementing procedures in Article V.

B. Each Party undertakes the obligations in this MOU with the understanding that it will obtain reciprocal treatment from the other Party.

C. Each Party shall, consistent with its laws, regulations, policies, and international obligations, give favorable consideration to all requests from the other Party for cooperation in defense capability research and development, production, procurement, and logistics support.

D. Consistent with its laws, regulations, policies, and international obligations, each Party shall:

1. Facilitate defense procurement while aiming at a long term equitable balance in their purchases, taking into consideration the capabilities of its defense industrial and research and development bases.
2. Remove barriers to procurement or co-production of supplies produced in the other country or services performed by sources (herein referred to as "industrial enterprises") established in the other country. This includes providing to industrial enterprises of the other country treatment no less favorable than that accorded to domestic industrial enterprises. When a responsible industrial enterprise of the other country submits an offer that would be the low responsive offer but for the application of any buy-national requirements, both Parties agree to waive the buy-national requirement.
3. Utilize contracting procedures that allow all responsible industrial enterprises of both countries to compete for procurements covered by this MOU.
4. Give full consideration to all responsible industrial enterprises in both the United States and Finland, in accordance with the policies and criteria of the respective procuring agencies. Offers must satisfy requirements for performance, quality, delivery, and cost. Where potential offerors or their products must satisfy qualification requirements in order to be eligible for award of a contract, each Party shall give full consideration to all applications for qualification by industrial enterprises of the other country, in accordance with the laws, regulations, policies, procedures, and international obligations of the procuring Party.
5. Provide information regarding requirements and proposed procurements in accordance with Article V to ensure adequate time for industrial enterprises of the other country to qualify for eligibility, if required, and to submit an offer.
6. Ensure that technical data and defense items (defense articles and defense services) made available for use by its industrial enterprises by the other Party are not used for any purpose other than for bidding on, or performing, defense contracts covered by this MOU, except as authorized, in writing, by those owning or controlling proprietary rights.
7. Give full protection to proprietary rights and to any privileged, protected, export-controlled, or classified data and information. In no event shall such data, supplies, or services be transferred to a third country or any other transferee without the prior written consent of the originating Party.
8. Exchange information on pertinent laws, implementing regulations, policy guidance, and administrative procedures.

9. Annually exchange statistics demonstrating the total monetary value of defense procurements awarded to industrial enterprises of the other country during the prior year. An annual summary shall be prepared on a basis to be jointly decided.
10. Provide appropriate policy guidance and administrative procedures within its respective defense organizations to implement the provisions of this MOU.
11. Establish, at the request of the procuring Party, arrangements and procedures concerning follow-on logistics support of defense capability purchased through procurements covered by this MOU. Both Parties shall make their defense logistics systems and resources available for this purpose as required and jointly decided.

E. This MOU is not intended to and does not create any authority to authorize the export of defense items (defense articles or defense services), including technical data, controlled on the U.S. Munitions List or U.S. Commerce Control List, or in the case of Finland, on the Decision of the Ministry of Defence on the implementation of the Decree on the Export and Transit of Defence Materiel or on the European Union (EU) Common List of Military Equipment. Further, any export subject to the U.S. Arms Export Control Act and the International Traffic in Arms Regulations, or the U.S. International Emergency Economic Powers Act and Export Administration Regulations, and any other applicable laws and regulations governing exports, or in the case of Finland, subject to the Decree on Export and Transit of Defence Materiel and the General Guidelines for the Export and Transit of Defence Materiel, and other applicable laws and regulations governing exports, must be compliant with such laws, decrees, regulations, and guidelines.

F. Nothing in this MOU may be cited to prevent the implementation of necessary export control provisions in individual cooperative project agreements or arrangements.

ARTICLE III Offsets

The Parties agree to discuss measures to limit any adverse effects that offset agreements have on the defense industrial base of each country.

ARTICLE IV Customs and Duties

Consistent with their national laws and regulations and international obligations, the Parties agree that, on a reciprocal basis, they shall not include customs, taxes, and duties

in the evaluation of offers and shall waive their charges for customs and duties for procurements to which this MOU applies.

ARTICLE V
Procurement Procedures

A. To the extent practicable, each Party shall publish, or have published, in a generally available communication medium a notice of proposed procurements in accordance with its laws, regulations, policies, procedures, and international obligations. Any conditions for participation in procurements shall be published in adequate time to enable interested industrial enterprises to complete the bidding process. Each notice of proposed procurement shall contain, at a minimum:

- 1. Subject matter of the contract;**
- 2. Time limits set for an application for solicitation or submission of offers; and**
- 3. An address from which solicitation documents and related information may be requested.**

B. Upon request, and in accordance with its laws, regulations, policies, procedures, and international obligations, the procuring Party shall provide industrial enterprises of the other country copies of solicitations for proposed procurements. A solicitation shall constitute an invitation to participate in the competition and shall include the following information:

- 1. The nature and quantity of the supplies or services to be procured;**
- 2. Whether the procurement is by sealed bidding, negotiation, or some other procedure;**
- 3. The basis upon which the award is to be made, such as by lowest price or otherwise;**
- 4. Delivery schedule;**
- 5. The address, time, and date for submitting offers as well as the language in which they must be submitted;**
- 6. The address of the agency that will be awarding the contract and will be responsible for providing any information requested by offerors;**
- 7. Any economic requirements, financial guarantees, and related information required from suppliers;**

8. Any technical requirements, warranties, and related information required from suppliers;
9. The amount and terms of payment, if any, required to be paid for solicitation documentation; and
10. Any other conditions for participation in the competition.

C. Consistent with its laws, regulations, policies, and international obligations, the procuring Party shall, upon request, inform an industrial enterprise that is not allowed to participate in the procurement process of the reasons why.

D. Consistent with its laws, regulations, policies, and international obligations, the procuring Party shall:

1. Upon award of a contract, promptly provide notification to each unsuccessful offeror that includes, at a minimum:

- a. The name and address of the successful offeror;
- b. Items, quantities, and price(s) of each contract award; and
- c. The number of offers received.

2. Upon request, promptly provide unsuccessful offerors pertinent information concerning the reasons why they were not awarded a contract.

E. Upon request, the procuring Party shall provide additional information to any unsuccessful offeror dissatisfied with the explanation for rejection of its offer or that may have further questions about the award of the contract. The additional information shall, consistent with the procuring Party's laws, regulations, policies, procedures, and international obligations, include information on the characteristics and the relative advantages of the offer selected.

F. Each Party shall have published procedures for the hearing and review of complaints arising in connection with any phase of the procurement process to ensure that, to the greatest extent possible, complaints arising under procurements covered by this MOU shall be equitably and expeditiously resolved.

ARTICLE VI Industry Participation

A. Implementation of this MOU shall involve both the Governments and the industrial enterprises of each country.

B. Each Party shall be responsible for informing the relevant industrial enterprises within its country of the existence of this MOU.

C. The Parties understand that primary responsibility for finding business opportunities rests with the industrial enterprises of each country.

D. The Parties shall arrange for their respective procurement and requirements offices to be familiar with the principles and objectives of this MOU so that, consistent with their normal practices and procedures, those offices may assist sources in the country of the other Party to obtain information concerning proposed procurements, necessary qualifications, and appropriate documentation.

ARTICLE VII Security

A. Any classified information furnished by either Party in connection with procurements subject to this MOU shall be protected in accordance with the Agreement between the Government of United States of America and the Government of Finland Governing the Protection of All Classified Military Information, effected by exchange of notes at Helsinki on October 11, 1991; as it may be amended, and the Supplemental Agreement thereto.

B. Both Parties shall take all necessary steps to ensure industrial enterprises within their respective country comply with applicable regulations pertaining to security and safeguarding of classified information.

ARTICLE VIII Implementation and Administration

A. The Under Secretary of Defense (Acquisition, Technology and Logistics) shall be the responsible authority in the Government of the United States of America for implementation of this MOU. The Minister of Defense, represented by the Director General of the Resource Policy Department, shall be the responsible authority in the Government of the Republic of Finland for implementation of this MOU.

B. Each Party shall designate points of contact to represent its responsible authority.

C. The representatives of each Party's responsible authority shall meet on a regular basis to review progress in implementing this MOU. The representatives shall discuss research and development, production, procurement, and logistics support needs of each country and the likely areas of co-operation in the acquisition of defense

capability; annually review the procurement statistics exchanged as agreed under Article II.D.9.; identify any prospective or actual changes in national laws, regulations, policies, procedures, or international obligations that might affect the applicability of any understandings in the MOU; and consider any other matters relevant to the MOU.

D. Each Party shall, as required, review the understandings established under this MOU in light of any subsequent changes to its national laws, regulations, policies, and international obligations, including but not limited to European Union directives and regulations, and shall consult with the other Party to decide jointly whether this MOU should be amended.

E. Each Party shall endeavor to avoid commitments that could conflict with this MOU. If either Party believes that such a conflict has occurred, the Parties agree to consult to seek resolution.

ARTICLE IX

Annexes, Amendments, and Implementing Arrangements

A. Annexes may be added to this MOU by written agreement of the Parties. Such Annexes shall be considered an integral part of this MOU.

B. This MOU, including its Annexes (if any), may be amended by written agreement of the Parties.

C. Implementing arrangements regarding the provisions of this MOU, including its Annexes (if any), may be negotiated by appropriate representatives of each Party. Such arrangements may involve procedural matters and administrative direction and guidance, but shall not create any substantive rights or obligations involving either Party. Provisions of any implementing arrangement should be consistent with this MOU. In the event of conflict between this MOU and any implementing arrangement, this MOU, as it may be amended, shall govern.

ARTICLE X

Duration and Termination

A. The Government of the Republic of Finland shall notify the Government of the United States of America of the completion of the national measures necessary for the entry into force of this MOU. This MOU shall enter into force on the day specified in such notification.

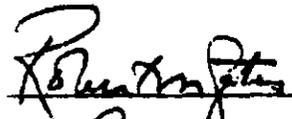
B. This MOU shall remain in force for ten years. This MOU may be terminated by either Party upon six months prior written notice to the other Party.

C. On the date of entry into force of this MOU, the Memorandum of Understanding between the Government of the United States of America and the Government of Finland Concerning Reciprocal Principles in Defense Procurement of October 24, 1991 shall terminate.

IN WITNESS WHEREOF, the duly authorized representatives of the Parties have signed this MOU,

in two originals in the English language.

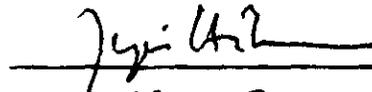
FOR THE GOVERNMENT OF THE
UNITED STATES OF AMERICA



Date: August 5, 2008

Place: Washington

FOR THE GOVERNMENT OF
THE REPUBLIC OF FINLAND



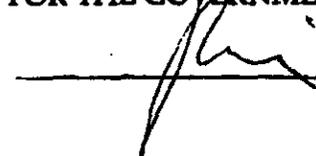
Date: 13.6.2008

Place: Helsinki

NOTIFICATION

The Government of the Republic of Finland hereby notifies the Government of the United States of America that it has completed its national measures necessary for this MOU to enter into force, and that this MOU shall thereby enter into force on October 3, 2009 [enter date 30 days after date of signature below by Finnish official].

FOR THE GOVERNMENT OF THE REPUBLIC OF FINLAND


_____ Date: Sept 5, 2009 Place: Washington D.C